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ABSTRACT

The rights of youth in New Mexico if they are arrested and accused of an illegal act are described. Emphasis is on situations they may encounter, what choices they have, and what they can do to help themselves. Although written specifically for youth in New Mexico, the book can easily be used or adapted for use with youth in other states. Situations include: possession of marijuana, shoplifting, joyriding, possession of alcohol, drag racing, using fake identification, glue and solvent sniffing, taking someone else's property, curfew violation, driving without a license, a family fight, vandalism, a fight, a border search, a bad joke, a bad cop, burglary, and a summary of the juvenile system. A list of agencies in New Mexico that might be willing to answer questions and give information is included. (RM)

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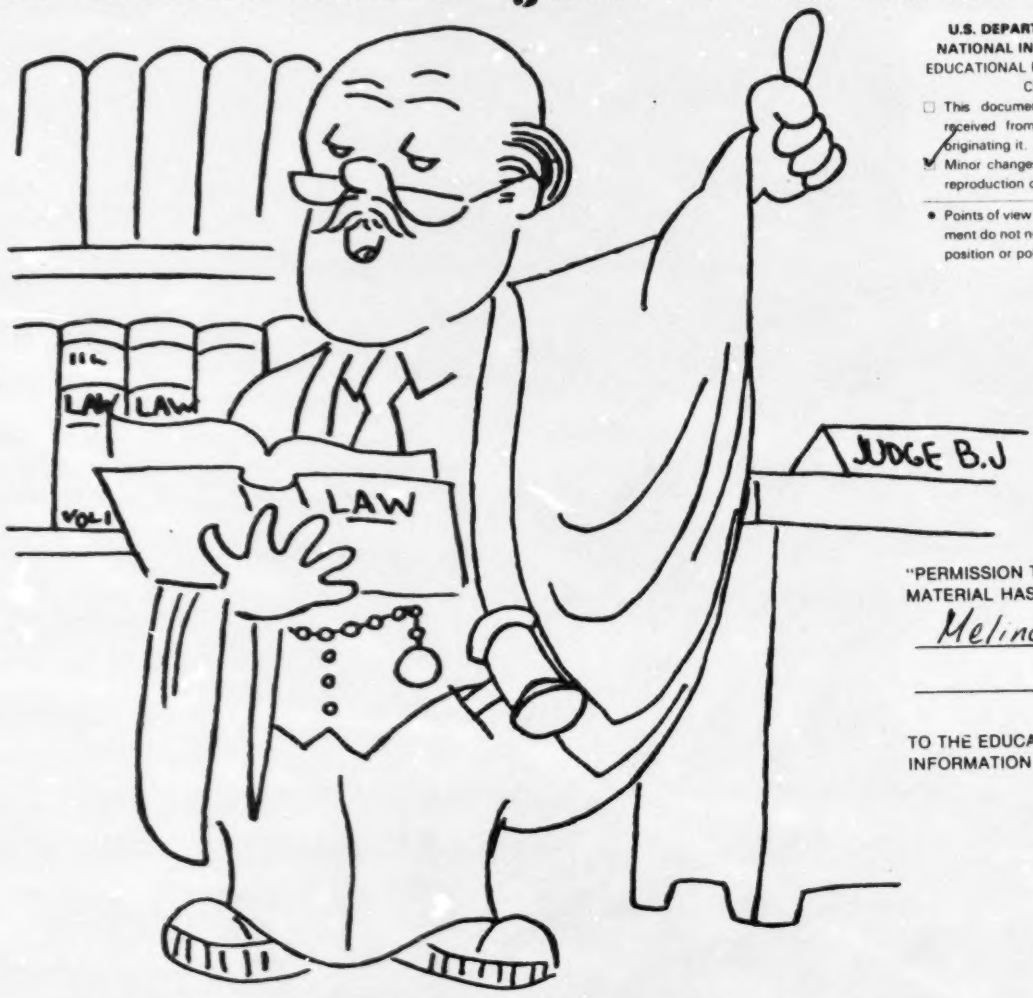
THE DON'T PANIC BOOK

What to Expect in an Encounter with the Police and the Juvenile Justice System in New Mexico



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THE DON'T PANIC BOOK

WHAT TO EXPECT IN AN ENCOUNTER WITH THE POLICE AND THE JUVENILE JUSTICE SYSTEM IN NEW MEXICO

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Introduction

You or your friends may have been stopped by the police or you might be in the future. This book was written to prepare you for possible encounters with the police and the juvenile justice system.

If you are under 18, you are considered a juvenile in New Mexico. This means that if you break the law, you will be treated differently than an adult who has broken the law. Penalties for juveniles are often not as severe as they are for adults. There are also special laws that apply to juveniles and not adults, such as laws against drinking, and curfew and truancy laws. Another major difference between the adult and juvenile systems is the way in which court records are handled. If an adult is found guilty of a crime, the court record is permanent, while a juvenile record can be sealed and only the court can have access to it.

Children and adults are treated differently in the eyes of the law for historic reasons. Before the late 1800's juveniles who committed crimes received the same punishment as adults, which often meant prison sentences with adult criminals under harsh conditions. A reform movement created different systems for juveniles and adults.

Juvenile court procedures were made more informal than adult courts and judges and probation officers were permitted to act more like parents when they handled juveniles. This new informal system

began to change in the 1960's to give juveniles accused of illegal acts many of the same rights adults have.

This book will tell you about your rights if you are arrested and accused of an illegal act. It will present situations you may encounter and try to show you what choices you have and what you can do to help yourself.

The consequences of any illegal act may vary, so don't expect any encounter with the law to be exactly the same as the situations that are described in this book. This book does not provide legal counsel for specific incidents. If you should ever find yourself in a situation similar to one in the book, you should consult a lawyer or a juvenile probation officer.

Most of the incidents in the book present **delinquent acts** against which society has made laws. The best way to avoid involvement in the juvenile justice system is to know the laws of your community and to obey those laws.

Certain legal terms are used in this book that may be new to you:

- A **felony** is a crime for which the penalty is a term of imprisonment of one year or more;

- A **misdemeanor** is a crime for which the penalty is a term of imprisonment of more than six months but less than one year;

- A **petty misdemeanor** is a crime for which the term of imprisonment is six months or less.

These offenses apply to the adult system, not the juvenile system.

However, they provide a standard of seriousness when applied to juvenile offenses.

In the juvenile system, the following are important terms:

- A delinquent act is an act committed by a juvenile which would be a crime by law if committed by an adult;

- A child in need of supervision is a juvenile under court supervision because of actions which would not be criminal if committed by an adult, such as: truancy or habitually disobeying parents.

Possession of Marijuana

Three young men, Tom, Dick, and Harry, are driving around town in Tom's car. Dick lights a marijuana cigarette, and passes it to Tom, who is driving. Tom takes a toke, and passes it to Harry, but Harry just passes it on to Dick in the back seat. Tom runs a red light, and a police officer pulls the boys' car over to give the driver a ticket. When Tom rolls down his window, the officer smells the grass.

WHAT SHOULD TOM, DICK AND HARRY DO?

First of all, they shouldn't panic.

Running a red light is a traffic offense. In New Mexico, possession of less than an ounce of marijuana as a first offense is a petty misdemeanor. A juvenile guilty of a first offense will probably not be held in detention. If the offense is a misdemeanor, the case is likely to be handled by the probation office without formal court action.

The officer has the right to know the identity of each person involved in the incident, and the boys must give their correct names. A person who makes up a name or refuses to answer can be charged with concealing identity, which is a petty misdemeanor.

Tom, Dick and Harry should be courteous. If they are not, further charges might result. If one of the boys swears at the officer or makes

the arrest more difficult, the officer might charge the boys with disorderly conduct, assault on a police officer, or resisting arrest. Even if all the charges do not stick, the total arrest record can influence the treatment of the boys.

SHOULD TOM, DICK AND HARRY REMAIN SILENT?

A drug charge can be serious, and one has the right not to make any statements to the officer. The boys should cooperate by giving basic information: name, address, age, school, name or guardian.

A person in custody has the right to remain silent, but saying, "I have a right to . . ." is not the smartest way to exercise that right. Tom, Dick and Harry can protect themselves just as well by saying that they do not want to talk about the incident before

they have spoken with their mothers, fathers, or lawyers -- and then remaining politely silent.

The officer may take Tom, Dick and Harry to the police station to be booked. However, they are still juveniles, and should not have to spend the night in an adult jail. Juveniles must be kept separate from adult prisoners. Juveniles over 13 years of age can be photographed and fingerprinted without a court order.

A person who is arrested should be allowed to make one telephone call, or have one made for him or her. Each boy should ask politely if he can call his parents or an adult friend. If Tom, Dick and Harry's parents can come to pick them up, the boys might possibly be allowed to go home with them. One of the first things to do is to get a lawyer, and to inform him or her exactly what happened before and during arrest. If parents cannot afford lawyers, the office of the public defender will provide one.

WHAT IF THE POLICE OFFICER DOESN'T READ TOM, DICK AND HARRY THEIR RIGHTS AFTER HE ARRESTS THEM?

An officer should always give the suspect certain warnings before questioning him. These warnings are known as **Miranda** warnings because they were set forth in the U.S. Supreme Court decision **Miranda v. Arizona.** If the officer does not give the **Miranda** warnings, the arrest is still legal, and it will be necessary to appear in court. If the officer does not read the boys their rights, statements the boys make about the offense will not be admissible in court under most circumstances.

Remember: A suspect has certain rights, even if the police do not "give" them. These rights are:

1. The right to remain silent;
2. The right to represented by an attorney;
3. The right to have an attorney appointed by the court if the family cannot afford one; and
4. The right to know that anything the suspect says voluntarily may legally be used in court against him.

Juveniles should be advised of these rights when first taken into custody, and should not be questioned without their parents or lawyers present.

It is possible for a juvenile to waive, or give up these rights if the juvenile is 15 or older and if he gives them up voluntarily and with knowledge of the consequences. This means that any statements the juvenile might make after giving up his or her rights can be introduced as evidence against him or her at the hearing. However, statements made by children under 15 cannot be used against them at the hearing.

WHAT IS THE LIKELIHOOD THAT TOM, DICK AND HARRY WILL BE FOUND GUILTY OF POSSESSION OF MARIJUANA?

It depends on the specific facts and what each person's lawyer does. Because Tom did run the red light, the officer had a legitimate reason to stop him. Because the officer smelled marijuana smoke, he had probable cause to look for marijuana (and other drugs, if there had been any).

If Dick had the joint in his pocket or near him when the officer stopped the car, Dick would be in possession. Tom took a drag off the joint so at some time he was in possession, too.

Even Harry, who never smoked the grass, may also be charged with possession because of the circumstances: The odor of marijuana

was present, a joint was being passed around, and it was possible that Harry could have smoked it.

THE PROBATION OFFICER HAS JUST OFFERED DICK AND HARRY THE OPPORTUNITY TO ATTEND THE FIRST OFFENDERS' DRUG ABUSE PROGRAM RATHER THAN GOING TO COURT ON CHARGES OF POSSESSION OF MARIJUANA. HOWEVER, THE OFFICER WANTS DICK TO STIPULATE OR ADMIT TO THE FACT THAT HE WAS IN POSSESSION. WHAT SHOULD DICK DO?

The boys have the option of admitting to the charges, but they also have a right to confer with a lawyer. It is better in serious drug incidents to have a lawyer present when talking to a probation officer. Generally, the first offender's program is a better alternative than going to court, if there is no good defense to the charges. Participation in such a program usually requires the juvenile to attend a series of meetings for some weeks with both parents. At these meetings, the participants hear lectures about drugs, the law, and psychology, and participate in group discussions. One of the advantages of this program is that Dick and Harry would have no court record of being convicted of a drug offense. The arrest record, however, remains. The probation officer keeps an unofficial record, because any subsequent arrest cannot be treated as a first offense.

DOES THE PROBATION OFFICER KEEP A RECORD OF PEOPLE WHO HAVE GONE THROUGH THAT OFFICE?

Yes. The probation office has information about juveniles whether they admitted to offenses, were found guilty of charges, or were handled unofficially.

These records are not public records. Certain individuals and offices may have access to that record, though. A judge may see the record

whenever the person goes to court, and certain agencies and institutions may see it. Parents and attorneys may also see the record although a judge may have to approve their access to the records. The general rule is that a judge may allow someone to see a juvenile's record if he or she has a legitimate interest in the case.

One important protection that the juvenile justice system offers is that juvenile court records and arrest records can be sealed and convictions are treated as if they never occurred. A special motion has to be made in court to seal the records, and a juvenile should have his attorney do this. In New Mexico the motion can be made when two years have passed since the young person's final release from legal custody or supervision. If a person with a sealed juvenile record is asked if he or she has ever been convicted of a crime, he or she can and should say "no."

A sealed record can be unsealed. A petition has to be filed and a court hearing held. The petitioner has to show that the record is relevant to his or her needs.

If a person is arrested for a second juvenile offense or an adult offense, the judge may be able to look at the person's arrest record and it might influence the type of sentence the judge gives.

Shoplifting

Roberta, Lee and Jane are shopping at a department store. In the clothing department, Roberta tries on a bathing suit and leaves it on underneath her dress. Lee finds a plant she likes but changes the price tag from $3.98 to $1.49. Jane picks out a dress pattern that she intends to pay for, but when the three of them get to the check-out counter, no one is there to wait on them. Roberta, Lee and Jane walk out the front door, where they are stopped by the manager of the store.

WHAT CAN THE MANAGER OF THE STORE DO TO THE THREE GIRLS?

He can detain them in a reasonable manner for a reasonable period of time, because there is probable cause to believe all three girls are guilty of shoplifting. He might separate the three friends, take them to his office or some other private place, and start asking them questions about the incident. Any information the girls give may be used against them in court. The manager might bring charges against Roberta, Lee and Jane for shoplifting.

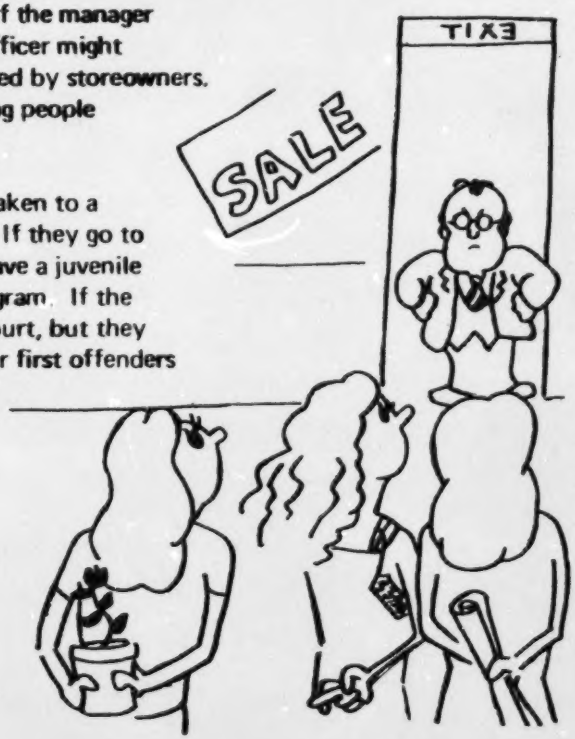
By concealing clothing underneath her own clothes, Roberta gives the impression that she intended to steal the bathing suit; this is one form of shoplifting. Changing the price of an item, as Lee did, is another type of shoplifting. By leaving the store with a pattern

in her hand, Jane also shoplifted. Even though Jane didn't hide the merchandise, she didn't pay for it.

The items taken were of little value, and shoplifting merchandise worth $100 or less is a petty misdemeanor. Shoplifting merchandise worth more than $100 is a felony.

If the store manager calls the police, the officer will be greatly influenced by what the store manager says. If the person who calls the police recommends that the juvenile be warned and let go, it is probable that the officer will do just that. However, if the manager wants the offender arrested, that is what the police officer might be expected to do. Because of the heavy losses suffered by storeowners, merchants and police have become tougher with young people accused of shoplifting.

The girls have broken the law, however; they can be taken to a detention facility, and they may have to go to court. If they go to court, they may be put on probation, and they will have a juvenile record and may have to participate in a probation program. If the girls are first offenders, they may not have to go to court, but they may be given a chance to participate in a counseling or first offenders program.



Joyriding

David and Eric are walking through the parking lot of K-Mart on Saturday night when Eric says, "Let's go for a ride in that red LeMans!" David agrees, so they hotwire the car and drive off. They speed over to Madina's house and ask her to go for a ride with them. Madina gets in and asks, "Whose car is this?" Eric says that he borrowed it from a friend. The police are on the lookout for the stolen car, and they soon catch David, Eric and Madina riding around.

WHAT CAN THE POLICE DO TO DAVID, ERIC AND MADINA?

Stealing a valuable item that is someone else's property is usually **grand larceny**, which is a felony. Since the kids who stole the LeMans didn't intend to keep the car, the police probably won't charge David, Eric and Madina with grand larceny.

The young people will more likely be charged with the unlawful taking of a vehicle, which is a felony by statute in New Mexico. The fact that the car was unlocked doesn't matter; it wouldn't matter if the keys had been left in the ignition.

Madina was not involved in the theft of the car but the police may not believe that she didn't know it was stolen. She may be considered an **accessory** to the crime, and be in as much trouble as David and Eric. Car theft is a very common crime among juveniles, and may be treated severely by the authorities. Not only is it stealing something

worth a great deal of money, but such acts often involve other illegal acts. Kids driving a stolen car are more likely to speed, drive recklessly, and get into accidents.

David, Eric and Madina are likely to be arrested, booked, and taken to the detention home or jail. All of them should have their parents contact attorneys because they may each be in serious trouble. It would be best if they did not use the same attorney as their interests may conflict.

Since auto theft is a felony, the case would automatically go to the district attorney's office, where charges may be filed. David and Eric might be put on probation. Charges against Madina would probably be dropped. If David and Eric have committed other offenses, they could be sent to one of the state's juvenile institutions such as the New Mexico Boys' School at Springer or the Youth Diagnostic Center in Albuquerque.

Possession of Alcohol

Bob and Carlos are driving around when they see their friends Theresa and Alice. The girls join the guys, and Bob opens cans of beer for the girls. They drive to a nearby park to fool around on the swings, when a patrol car pulls up and shines a spotlight on them.

WHAT SHOULD BOB, CARLOS, THERESA AND ALICE DO?

They should not run. When a young man or woman runs from an officer, the officer may assume that the person has committed a more serious offense, and shoot at him or her. Bob, Theresa, Carlos and Alice should stay where they are, and be as courteous as possible.

The least the police will do is pour out any liquor that is open. In New Mexico, it is sometimes a crime for anyone of any age to be drinking in public or to have open containers of any kind of alcoholic beverage. Cities differ on their laws and penalties for public drinking. Young people can learn about the specific laws of their town by calling or visiting the office of their local police department or district attorney.

In New Mexico, the **age of majority**, or age at which a person is no longer treated as a juvenile, is 18. However, the drinking age in New Mexico is 21, unless the person is with one of his or her parents or legal guardian. A person under 21 who is married to someone at least 21 may also drink with his or her spouse.

The police officer will probably confiscate any alcohol Bob, Theresa, Carlos and Alice have. The officer could arrest them for drinking in public or possession of alcohol by a minor. The result could be as harmless as a warning, or as severe as all of them having to appear in court. The result depends a great deal on how much they have had to drink and what they say to the officer.

Drag Racing

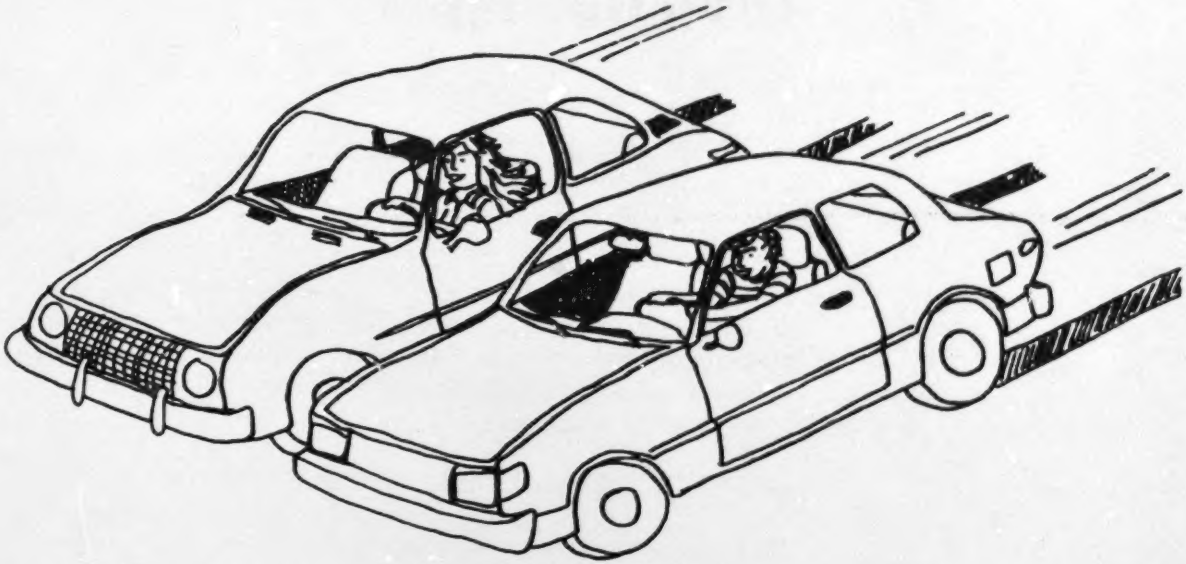
While driving home from school, Denise sees her brother, Bill, and challenges him to a drag race. They take off from a stoplight and drag for five blocks. Then Bill loses control of his car and crashes into the median. No one is hurt but an officer sees the incident and begins writing out tickets.

WHAT CAN DENISE AND BILL BE CHARGED WITH?

The police officer can charge both of them with reckless driving and speeding. In New Mexico, if Denise and Bill are under 18 but over 15, they will be treated much the same as adults.

If a city police officer wrote the tickets, they will go to a municipal court (Metropolitan Court in Albuquerque). If a county sheriff or a state police officer wrote the tickets, they will go to the lowest state court, such as a magistrate court. Certain named offenses, such as driving while intoxicated and leaving the scene of an accident where there has been property or physical damage are handled in the juvenile justice system. The actions and attitudes displayed by the dirver will affect his or her treatment and the severity of the charges. A driver charged only with reckless driving will go to magistrate court.

A person can plead guilty to such charges and pay the fines, or he can plead not guilty, get an attorney, and go to court. Because of the



serious nature of these charges, Denise and Bill should consider getting an attorney if their parents can afford one.

The way in which juvenile traffic offenses are handled might be subject to changes by the New Mexico Legislature. Check with your local juvenile probation office or police department for the current laws and procedures.

Using Fake Identification

Brit wants to go to one of the discos with her college friends, even though she is only 17. She gets her friend, Carmen, to change her driver's license to read that she is 21. Using her altered license, she gets into the nightclub where she and her friends are served liquor.

WAS THE LAW BROKEN?

Yes. First of all, Brit is guilty of a misdemeanor when she is served alcohol as a result of presenting a fake I.D. It is also a misdemeanor to use or possess a fake driver's license. In addition, a statute in New Mexico makes altering a driver's license a felony. Finally, it is a crime to use something that has been forged as if it were genuine, so Brit would also be guilty of **forgery**, or **fraud.**

Brit's friends could also be arrested for contributing to the delinquency of a minor. In New Mexico, it is a misdemeanor to buy alcohol for a minor unless the purchaser is the minor's parent, legal guardian or spouse.

Brit could also cause trouble for the disco. The disco could be fined several hundred dollars or have its liquor license revoked for serving alcohol to a minor.

The only way for a minor to drink legally is to go with a parent or spouse who is of legal drinking age.

Glue and Solvent Sniffing

Manuel and Chip were in the balcony of one of the local theaters. They soaked a rag in spray paint, and were sniffing it to get high. The boys were found by the theater manager after the last show was over, and he called the police.

WHAT WILL THE POLICE DO TO MANUEL AND CHIP?

Solvent sniffing is a misdemeanor, as well as a dangerous practice. Many people have been physically and mentally damaged by the effects of sniffing, and deaths have resulted from accidents with solvents.

Because of this, the police are likely to take action when they find anyone stoned from solvent sniffing. Often, the police will take juveniles to a detention home to stay overnight for protective custody as they would take an intoxicated adult to jail to sober up.

Manuel's and Chip's behavior may also have other consequences. Because they were found in a theater, the officer might charge them with being a public nuisance. If their intoxication caused them to be noisy or rowdy, he could charge them with disorderly conduct and/or foul and abusive language. These charges are usually misdemeanors but the charges can multiply depending on the behavior of the person.

If Manuel and Chip had been caught driving while stoned, they would have been involved in an even more serious offense.

When you are with people who have been inhaling glue or solvents, it is important to get them to breathe fresh air. They should not exert themselves, however, because the solvents can cause irregular heart beating which may result in death.

Taking Someone Else's Property

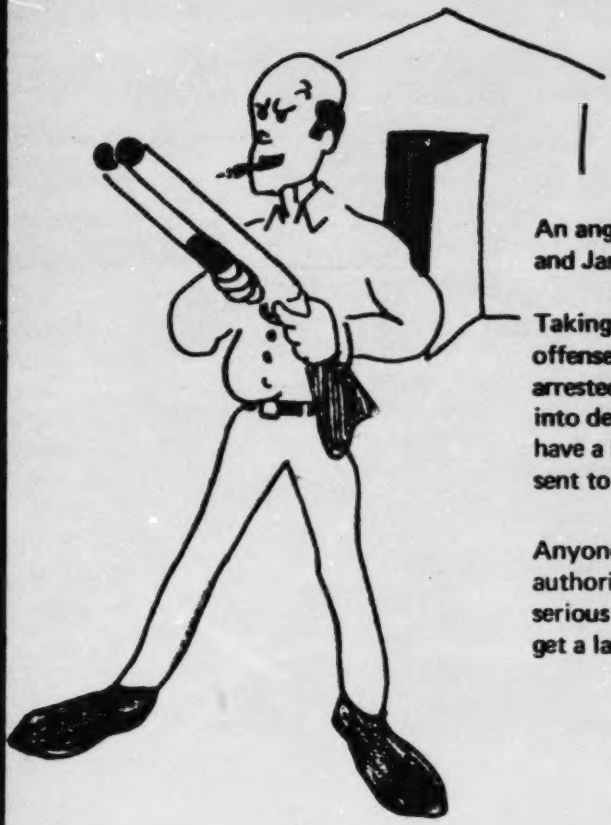
Don and James are out of school for the summer with nothing to do. Don suggests that they get some fishing poles and spend the weekend camping and fishing. They decide to "borrow" fishing equipment that a neighbor stores in his shed. They plan to return the equipment after they have used it. The shed is unlocked, so Don walks in and picks up the rods, reels, and tackle boxes. James waits outside as a lookout. As the boys are sneaking out of the yard, the owner catches them and holds them at gunpoint while he calls the police.

WHAT WILL HAPPEN TO DON AND JAMES?

Even though the boys think they are merely borrowing the equipment, they are really taking the property of another person without his permission.

The boys will be arrested for burglary, a serious crime. It is likely that Don and James will spend the night in a detention center or jail. In New Mexico, breaking into a building other than a residence with the intent to steal something is burglary, a fourth degree felony. If they had broken into the house, it would have been worse; residential burglary is a third degree felony.

The police might be influenced by what that complaining party wants them to do.



An angry homeowner is likely to request that the police take Don and James to a detention center.

Taking someone else's property is against the law and is a serious offense. Young people charged with burglary are more likely to be arrested than in the case of a less serious offense, more likely to be taken into detention, and more likely to appear in court. If the boys have a history of such behavior, it is possible that they will be sent to a state institution if found guilty.

Anyone arrested for burglary should be courteous to the authorities and exercise their right to remain silent. Because of the serious nature of this offense, someone charged with burglary should get a lawyer as soon as possible.

Out After Curfew

E.Z. Ryder and his girlfriend CeeCee are coming home from the drive-in movie at midnight; the curfew for their age is 11:00 P.M. A police officer stops them for curfew violation.

WHAT SHOULD THEY DO?

They should be very polite to the officer. This is an offense in which the officer has a great deal of discretion in dealing with the people he or she stopped. If they explain where they have been, and where they are going, the police officer may not bother them further.

The next time E.Z. and CeeCee expect to be out after curfew, they can avoid this problem by having their parents write a note stating where they are going and authorizing them to be out until a certain hour. This will probably avoid a confrontation with the police.

Curfew laws vary from city to city. In Albuquerque, for example, the curfew for children 14 and under is 12:00 midnight (during daylight savings time). For kids 15-16, it is 1:00 A.M. While mountain standard time is in effect, the curfew is 11:00 P.M. for kids 14 and under and 12:00 midnight for 15-16 year olds. To find out what your local curfew laws are, call your local police department.

Driving Without a License

Neal is 13 and too young to have a driver's license, but he likes cars and drives around the driveway of his home. One day, when his parents are out, he finds the keys to his mother's car left in the ignition and drives around the driveway. Soon he gets bored, and decides to practice in a nearby parking lot. As he is pulling out of the driveway, another car hits him, smashing the front end of both cars. A neighbor calls the police, and an officer arrives. The officer can tell that the other driver was going too fast and is obviously drunk.

When Neal reaches into his pocket to get out the telephone number where he can reach his father, a small unlabelled bottle of asthma pills drops out. The officer picks up the bottle, tells Neal that the pills will have to be taken to the police laboratory to be analyzed, and takes Neal to the detention home.

NEAL IS NOT WORRIED BECAUSE THE ACCIDENT WAS THE FAULT OF THE OTHER DRIVER. IS HE RIGHT?

No. Neal is in trouble and his parents may be in trouble, too. The age at which a young person can obtain a driver's license is 16, but he needs parental permission. A learner's permit is available at 14, but he can only drive with a licensed driver in the car. At 15 a juvenile can obtain a license by taking driver's education and by getting parental permission.

Driving without a license is illegal, and Neal will be charged with that offense.

The insurance policies covering a car are not effective when the car is operated by an unlicensed driver. An accident involving an unlicensed driver might cause Neal's parents to lose their automobile insurance.

Neal could be sued by the other driver. If the court rules against Neal, he may have to pay money to the other driver for a term of years, and he will not be allowed to own and operate a car until he has paid all the money owed. Under a special law, Neal's parents could be sued up to the sum of $2,500.

THE PILLS ARE MEDICATION PRESCRIBED BY HIS FAMILY DOCTOR. DOES NEAL HAVE TO WORRY ABOUT THEM?

Yes. Neal's pills will eventually be proven medication, but it is not smart to carry unlabelled drugs. Police officers encounter many drug addicts, and have learned to be suspicious of most stories they hear about drugs. Most of the people who are making illegal use of pills try to pass them off as prescription medication.

Neal could have saved himself trouble by keeping his pills in a bottle with a label showing that the drug is a prescription. If Neal needs to carry the pills, he can ask his pharmacist to make a duplicate label to be folded in a tiny, pocket-size bottle.

A Family Fight

Mona Lot has a fight with her mother, and her mother slaps her. Mona decides that she isn't going to put up with this anymore, so she leaves home. She is staying with a friend's family when the police arrive to pick her up.

WHAT WILL HAPPEN TO MONA?

If the situation between Mona and her mother has broken down so that Mona's mother thinks she is **incorrigible**, or beyond parental control, then Mona's problems have just begun.

In New Mexico, Mona might be considered a **child in need of supervision**, also called CHINS in the juvenile justice system. This category includes juveniles who are habitually truant from school, habitually disobedient to parents, and/or in need of care and rehabilitation. When parents have a child they feel they can no longer control, they can file a complaint against their child in the juvenile justice system even if the child has not done anything illegal.

WHAT WILL HAPPEN TO MONA IN THE JUVENILE SYSTEM?

Mona might be taken away from her mother, and might be placed in a foster home, or a child welfare agency facility. Mona is not supposed to be put with delinquents, juveniles who have committed

crimes. Juveniles in need of supervision are supposed to be treated differently from those who have committed crimes.

There will be a hearing to determine if Mona is a child in need of supervision. The judge will decide what he or she feels is best for Mona; whether she ought to go back home, or be placed with a special agency, a relative, or a group home.

WHAT DOES THIS MEAN TO PARENTS AND CHILDREN WHO ARE HAVING DIFFICULTY GETTING ALONG?

Mona's experience illustrates that calling the police and the juvenile system is a desperate step. What happens after that is out of the hands of the parent and child.

There are other alternatives to investigate before getting involved in the juvenile justice system. The first step is to seek some counseling. There are school counselors, private psychologists and psychiatrists, university center counselors and psychologists, personnel at mental health centers, and family counseling services.

Mona and her mother ought to seek professional help in resolving their difficulties. If the differences between them cannot be resolved, the family should consider having Mona live with relatives, friends, or in a group home.

A judge or a probation officer has a few more alternatives than the family, but having a child declared a juvenile in need of supervision should be done only as the last resort. In such instances, the juvenile should have a lawyer to ensure that the system won't work against the best interests of the child and the family.

WHAT IF MONA WAS BEING ABUSED BY HER MOTHER? HOW COULD SHE HELP HERSELF?

The slap given Mona by her mother may not constitute abuse. Some children, however, are abused, either sexually or physically by parents, or other family members. If she had been abused, she should report the abuse to the local police or sheriff's department. Another agency which handles abused children is the Department of Human Services, which has offices throughout the state. A child in need of assistance can contact them for advice. An abused child may be put in a foster home or a group home and counseling might be recommended for the abusive relative. Charges may also be pressed against the relative.

Vandalism

Peter and Bobby take a can of spray paint and spray their first names over the side of their school building. The janitor sees them and calls the police.

WHAT CAN THE POLICE DO TO THEM?

Peter and Bobby are likely to be charged with criminal damage to property, or vandalism, as it is commonly called. They may be taken to the detention home because damaging public property could be a serious offense.

If they do over $1,000 worth of damage, which can happen when kids vandalize public buildings, the offense is a felony. The boys' parents may be responsible and might have to pay for the damage and possibly, other expenses. Sometimes the judge will order kids to use their money to pay for the damage they do.

The boys might also be charged with criminal trepass, because it is illegal to be on property without permission with the intent to do damage. The punishment received by the boys will depend on the number of charges, the extent of damage, and whether the boys have done this in the past.

A Fight

Henry just found out that his friend, Pilo, has been dating his girl, Julie. Henry drives down to where Pilo works to confront him. When Henry finds Pilo, he tells him that he is going to punch his teeth in and break his head into little pieces. Afraid that a fight is about to occur, the owner of the store calls the police. The police are on their way to arrest Henry.

WHAT SHOULD HENRY DO?

The first thing Henry should do is calm down. The police will arrive anticipating a fight. The last thing Henry should do is turn his fighting mood on the police.

Henry may already be guilty of the charge of assault, even though he hasn't hit Pilo. When Henry intentionally put Pilo in the position of fearing that he would be hit then and there, he committed an **assault**, which is a petty misdemeanor. It would also be an assault if Henry had taken a swing at Pilo and missed. If Henry actually hit Pilo, the offense would become **battery**. Legally, battery occurs when a person is intentionally touched without his consent, and it is a petty misdemeanor.

If Henry continues to be angry and threatens the police officers, he will also be guilty of assault on a police officer, a serious charge.

Henry could not use as a defense that he was provoked because Pilo was dating his girlfriend. Pilo would be justified in returning the same degree of force that Henry used in attacking him. This would be excused as **self-defense**. However, Pilo should try to avoid a fight.

WHAT IF HENRY HAD THREATENED PILO WITH A SWITCHBLADE?

If Henry had threatened Pilo with a switchblade, simple assault would become aggravated assault, which is a felony in New Mexico.

If Henry had "battered" Pilo with the knife – and this could be accomplished by merely cutting Pilo's outer clothing – this would constitute aggravated battery.

Juveniles who fight or threaten to fight are regarded as serious troublemakers. A juvenile who carries even a pen knife in his pocket or large tools in his car can expect to be regarded severely by officials when he gets into trouble.

The best way to avoid official involvement is to avoid the behavior that provokes people. Don't carry weapons or objects that can be mistaken for weapons. Don't threaten people or fight in public.

A Border Search

Emily and Marjorie spent the weekend in Mexico, and as they were crossing the bridge back into the United States, the U.S. Border Patrol stopped them and searched their car.

CAN THE BORDER PATROL DO THIS?

Yes. The border patrol has the authority to make searches without warrants of all automobiles entering the U.S. to determine if a person can lawfully enter the country, and whether his or her belongings can lawfully be brought in.

ANOTHER SEARCH

Emily and Marjorie then drove to El Paso, Texas, where they met their connection, Phyllis, and bought some marijuana. They put the grass in the trunk of their car. Driving through Texas, they picked up a hitch-hiker, Jackson. The car was stopped at a traffic checkpoint, and a police officer searched the trunk, looking for "illegal aliens." He found the marijuana and arrested Emily, Marjorie, and Jackson for possession of a controlled substance.

WHAT IS WRONG WITH THIS?

The officer's search was not valid. This was not a border search, so

the officer had to have either a search warrant or probable cause to search without a warrant.

An officer can search a car when the owner or driver consents to the search. The owner has the right not to consent to the search. A driver should not be stubborn or obstinate if an officer chooses to search the car. If the car is searched without consent or probable cause, the marijuana that the officer finds cannot be used as evidence against Emily, Marjorie, and Jackson, and it is likely that they will not be found guilty of possession. In the event that the police officer testifies that he smelled marijuana in the car, the marijuana in the trunk could be used as evidence against the girls.

Since Jackson did not know about the marijuana, nor was it in a place where he could get to it, it is likely that he would not be found guilty of possession of marijuana.

A Bad Joke

Alfredo and Orlando are out after midnight and they are stopped by a police officer for curfew violation. They aren't doing anything; it is just late. Thinking that they won't be believed, they tell the officer that they are O.J. Simpson and Don Perkins.

HOW WILL THE OFFICER REACT?

This response is sure to make the police officer angry. When an officer stops someone and asks for identification, the officer expects to get a straight answer. An officer has the right to determine the identification of anyone he stops in the course of his official duties. This includes checking juveniles who are out after curfew.

Even though the boys weren't doing anything, they were breaking the law by being out after curfew. In this kind of situation, Alfredo and Orlando have the opportunity to improve this encounter by their own responses and actions. The boys should demonstrate respect for the officers and for the law.

The officer has many options. He can send the boys home without doing anything else. He can also send them home with a "warning." This means that nothing will happen to them but the officer will report the incident.

Because Alfredo and Orlando smarted off, the officer is likely to

arrest them for curfew violation and may also charge them with concealing identity, a charge of disguising oneself or misrepresenting one's real name to a police officer.

Such an arrest may involve a trip to the police station. What happens to Alfredo and Orlando will again depend on their own behavior. Lack of cooperation may result in their spending the night in a detention home or jail. Alfredo and Orlando may find themselves in the juvenile justice system. This means having an arrest record, possibly going to court, and supervision by the probation department. All because of a stupid joke.

A Bad Cop

Rico and Maria were riding around town on Friday night in Rico's souped-up Chevy. A police car stopped them. The officer ordered Rico out of the car, searched him, and pushed him around a little. Then the officer called Maria a "chile picker," ordered her to get out of the car, and searched the car. The officer didn't find anything in the car, and told them: "If I ever catch you around here again, I'll find something to charge you with."

WHAT SHOULD RICO AND MARIA DO?

The law states that a police officer must have probable cause to stop a car. He has to have some reason to believe that a traffic or criminal offense has been committed. In order to search the car, he must again have some reason to believe a crime has been or is being committed. He might smell marijuana, see a weapon, or some other clear indication of criminal activity.

In the case of Rico and Maria, the officer's behavior was probably improper, but it should not affect the way they react. If Rico acts angry, he may find himself in trouble. No one should challenge an officer on duty because of his position of authority. The officer could charge a person with assault on a police officer, interfering with an officer, disorderly conduct, or resisting arrest — or all of these. The record becomes a matter of the person's word against the officer's word.

If an officer clearly acts out of order, especially if he shows racial prejudice or uses unnecessary force, a person can do something about it. Rico and Maria should each file a complaint with the internal affairs department of the local police. This may not have an immediate effect, but when the police chief gets several complaints about the same officer, he probably will investigate the officer's behavior.

If the damage to Rico's car was extensive, or Rico and Maria think the officer's behavior was bad enough, they should see a lawyer. Police officers can be sued if they abuse their position of authority. A lawyer can best determine if this has happened in a specific incident.

Burglary, and a Summary of the Juvenile System

Casey, Jim and Michael broke into an empty house and were caught by a police officer in the act of taking property. The officer immediately took the three boys to the nearest juvenile detention center.

WHAT WILL HAPPEN TO CASEY, JIM AND MICHAEL?

Once the boys reach the detention home, they will be booked. Booking constitutes legal entry into the justice system and represents an official arrest with the opening of a record. Juveniles over the age of 13 can be photographed and fingerprinted without a court order. Since Casey, Jim and Michael are 16, they were booked.

Each boy gave the officer information about his age, home address, and grade in school. The boys did not give the officer any further information about the incident for which they were arrested, but asked the officer if they could call their parents to tell them what had happened.

Casey's and Jim's parents came immediately to pick them up. Because no one was hurt and no serious property damage was done, and they had behaved quietly and politely to the arresting officer and the detention home personnel, they were released to their parents. If the boys had fought the arresting officer and smart-mouthed the detention home people, they might not have been released so easily.

When the detention home officer called Michael's home to tell his parents what had happened, Michael's father said that they should keep Michael for a few days, and it might teach him a lesson.

The next day, Michael spoke with one of the probation officers about his predicament. Michael still said he did not want to talk about the incident until he had spoken with a grown-up, but he said that he knew he was in trouble and needed some good advice. Because he presented his situation courteously, Michael was able to get his parents to contact an attorney. It is important to remember that juveniles have a right to an attorney if they are detained. If a child's parents can't provide one, the court must appoint an attorney.

When processed through the justice system, juveniles are taken to a juvenile detention facility whenever possible rather than a jail.

If they are taken to a jail, they must be separated from adult prisoners. Usually juveniles can be released to the custody of their parents and are not detained longer than 48 hours.

A young person's behavior will almost always influence his treatment. The officials in the system have a lot of leeway in their dealings with juveniles and they are more apt to help someone who is respectful and reasonable. While nobody expects a young person to act like a teacher's pet, someone who acts angry or shows a temper is going to bring out the worst in everyone.

When a young person is taken into custody and held, there is a preliminary inquiry with an intake probation officer within 48 hours. An attorney can also be present but state law does not specifically guarantee the child's right to be represented at this inquiry. The juvenile is guaranteed that anything he says during this hearing cannot be used against him in court.

After the hearing, the intake officer makes recommendations as to whether the case should be acted on by the court, referred to another agency, or just dismissed. If the young person is accused of a felony, the case is automatically referred to the district attorney's office. The district attorney usually files a formal complaint against the juvenile. The detained juvenile must also be given a detention hearing within one working day from the date of the petition. The judge will decide whether to continue to hold the juvenile.

The majority of juvenile incidents go no further than the probation department but treatment of a juvenile depends on a combination of factors. Age is important; younger persons will be handled differently than older ones. A person's past record is even more important. At any age the first offender gets more lenient treatment. The longer the record the stiffer the treatment. The nature of

the offense will also influence treatment. In the case of a serious offense like intentionally injuring someone, a juvenile is sometimes bound over for trial as an adult criminal.

A child of 15 or older can be bound over when the alleged act is murder and one of 16 or older can be bound over when the alleged act is assault with intent to commit a violent felony, kidnapping, dangerous use of explosives, felony criminal sexual penetration (rape), robbery, or aggravated burglary.

Due to these factors, it is possible that three people involved in the same offense can each receive different treatment. Because of the serious nature of the charges against Casey, Jim and Michael, a judicial hearing was recommended. But each boy reached that point with a different record, different attitudes, and therefore, different chances.

In an **adjudicatory** hearing, which is the juvenile system's equivalent to a trial, the juvenile has some of the same constitutional protections as an adult. These rights, laid out by the United States Supreme Court, are the following:

1. **Notice of the charges.** Notice must be given to the juvenile and his or her parents enough in advance of the scheduled court hearing so that they may have a reasonable opportunity to prepare for the hearings. In this notice, the alleged offense must be clearly stated.
2. **Right to counsel.** The juvenile and his or her parents must be informed of their right to hire an attorney to represent the juvenile, or have one appointed by the court if they cannot afford to hire one.
3. **Right to call witnesses.** A juvenile has the right to have witnesses personally appear in court and testify under oath.

4. **Right of cross-examination.** The juvenile and his or her parents have the right to examine any witnesses against them. Unsworn statements given to a probation officer are not admissible in evidence in an adjudication.

5. **Right against self-incrimination.** Juveniles, like adults, cannot be forced to testify against themselves. Because of the special circumstances in juvenile law, any statement or confession must be closely inspected by the judge to make certain that it is free of coercion, and made with full knowledge of the juvenile's legal rights. A confession may not be admitted into evidence if it is obtained illegally.

New Mexico grants some additional rights by state law, such as the right to a jury trial for a crime that an adult would also be given that right. State law also forbids a confession to be used against a juvenile under 15 years old at trial.

The standard of evidence required to convict a juvenile is the same as that required for an adult – all charges against the juvenile must be proved beyond a reasonable doubt. Juvenile hearings charging a child with being a delinquent are open to the public. Hearings for a child in need of supervision or neglect hearings are closed to the public.

After the judicial hearing if the charges against the young person are proved, the judge decides what should happen to the juvenile. This is called the **disposition.** The judge most often follows the recommendation of the investigating probation officer. The mildest disposition would be to have the juvenile remain with his or her parents while on probation. The terms of probation might require counseling, psychological treatment, getting a job, or other activities.

If a hearing is not held, disposition can be made at the probation office level. A juvenile who has committed a first offense can also be assigned to the First Offender's Program without having to go to court.

Casey was permitted to go home with his parents and was placed on probation. He was required to see a probation officer once a week for six months, do volunteer work at a local boys' club, and was not allowed to see Jim and Michael during probation.

A person on probation must be extremely careful to follow the terms. If they are violated, probation may be taken away and replaced by other, more restrictive types of supervision.

Jim's parents told the probation officer they did not want him to return home. Jim's disposition will involve placement outside the home, but not in an institution because he is a first offender. He has shown the probation officer and the judge that he realizes what he has done, and will not do it again. Luckily, Jim has an older brother who agrees to let him come live with him. Jim is put on probation for six months, and his parents still have legal custody of him. The conditions of his probation are the same as those of Casey's probation.

If Jim had not had an older brother willing to take him in, the court might have tried to place him with a foster family. Foster families are in short supply for older kids, though, and a person in this kind of situation is smart to see if he or she can't find a brother or sister, cousin or relative to live with.

Michael received less lenient treatment from the court. This was his third offense, and the judge was influenced by the accumulated reports which showed that Michael seemed to be the leader in each

of the incidents in his record. In order to prevent Michael from influencing his friends, the judge sent him to the New Mexico Boys' School at Springer. An initial commitment can be for two years; a repeat commitment can be for three years.

Once a juvenile is found to be delinquent by the court, lenient dispositions, such as Casey's and Jim's, can still be given. In this case, three boys involved in the same incident each received different treatment because of past record, behavior, and actions and attitudes of the family.

When the parents show an awareness of the kind of help and discipline that their child needs and are willing to try to provide it, the authorities are more likely to let the parents help rather than place the child into already overcrowded juvenile rehabilitation facilities.

DO CASEY, MICHAEL AND JIM HAVE A RECORD?

The three boys have juvenile records. They do not have criminal records because juvenile proceedings are not really criminal proceedings. When they have to answer the question, "Have you ever been convicted of a crime?," they can truthfully answer, "No."
There is a record, though, stating that they were found by the court to be juvenile delinquents. That record may influence any future appearances in court, even as adults. The record may also be sealed, as was discussed earlier.

Any record is a liability, but a juvenile record is less of a liability than an adult one. A juvenile record gives a young person another chance – and it is up to that person to make sure he or she uses that second chance well.

For Your Information

There are some important rights you can exercise – your right to knowledge and your right to help yourself.

The laws of the nation, state and your city or town are a matter of public record and available to you. If you have any questions about your own activities or those of your friends, you can find answers by telephoning your local police, public defender, or juvenile probation officer for information. A number of these agencies are listed below. The public defender's office will probably answer limited inquiries although they cannot give legal advice.

Your local courthouse should have a copy of the state laws, including the juvenile code. Ask courthouse personnel to assist you. If you live near the University of New Mexico School of Law, ask a law librarian to help you or ask your civics or history teacher to assist in getting information. It is important to remember that the juvenile laws are subject to change by the Legislature. Check with agencies listed below regarding changes which would affect your rights.

Your local juvenile probation offices or human services departments should be willing to tell you about the many programs available in your area, such as first offender, child abuse, alcohol and drug abuse programs.

If you want to find out more about laws relating to school, you may call the attorney at the Department of Education in Santa Fe, listed below.

There are also several books you might want to read, including the American Civil Liberties Union books, **The Rights of Students** and **The Rights of Young People.** These are available from bookstores. Ask a teacher to help you find them.

When you know your rights and how to effectively claim them, you can improve your encounters with the police and the juvenile justice system.

The following is a list of agencies in the state that might be willing to answer questions and give information.

JUVENILE PROBATION OFFICE
Drawer T
Alamogordo, NM 88310
437-0420

JUVENILE PROBATION OFFICE
Juvenile Justice Center
5100 Second Street NW
Albuquerque, NM 87107
345-8886

JUVENILE PROBATION OFFICE
Box 130
Bernalillo, NM 87004
867-5659

JUVENILE PROBATION OFFICE
County Courthouse, Box 98
Carlsbad, NM 88201
885-9293

JUVENILE PROBATION OFFICE
Curry County Courthouse
Clovis, NM 88101
763-4611

JUVENILE PROBATION OFFICE
A101 NW Energy Building
Farmington, NM 87401
325-1631

JUVENILE PROBATION OFFICE
Box 460
Gallup, NM 87301
722-4386

JUVENILE PROBATION OFFICE
County Courthouse
Las Vegas, NM 87701
425-5688

JUVENILE PROBATION OFFICE
Lea County Courthouse, Box 723
Lovington, NM 88260
396-5366

JUVENILE PROBATION OFFICE
P.O. Box 1776
Roswell, NM 88201
623-2920

JUVENILE PROBATION OFFICE
P.O. Box 1387
Santa Fe, NM 87501
827-2018

JUVENILE PROBATION OFFICE
Grant County Courthouse, Box 2339
Silver City, NM 88061
538-2061

JUVENILE PROBATION OFFICE
Box 1287
Taos, NM 87571
758-3722

JUVENILE PROBATION OFFICE
Sierra County Courthouse, Box 32
T or C, NM 87901
894-7167

JUVENILE PROBATION OFFICE
Box 1067
Tucumcari, NM 88401
461-1777

PUBLIC DEFENDER
312 Tenth Street
Alamogordo, NM 88310
437-4600

PUBLIC DEFENDER
615 First Street NW, Suite 200
Albuquerque, NM 87102
243-6742

PUBLIC DEFENDER
112 West Fox Street
Carlsbad, NM 88210
887-5574

PUBLIC DEFENDER
103 East Sixth Street
Clovis, NM 88101
769-1991

PUBLIC DEFENDER
204 North Turner
Hobbs, NM 88240
393-5176

PUBLIC DEFENDER
120 West Commercial
Portales, NM 88130
356-6411

PUBLIC DEFENDER
108 East Third Street
Roswell, NM 88201
623-8711

PUBLIC DEFENDER
125 West San Francisco
Santa Fe, NM 87501
827-5344

DISTRICT ATTORNEY
P.O. Box 838
Alamogordo, NM 88310
437-3640

DISTRICT ATTORNEY
415 Tijeras NW – 215
Albuquerque, NM 87102
848-1000

DISTRICT ATTORNEY
P.O. Box 1448
Carlsbad, NM 88220
885-8822

DISTRICT ATTORNEY
Curry County Courthouse
Clovis, NM 88101
769-2246

DISTRICT ATTORNEY
P.O. Box 1798
Deming, NM 88031
546-6527

DISTRICT ATTORNEY
3539 East Thirtieth
Farmington, NM 87401
327-4881

DISTRICT ATTORNEY
Dona Ana County Judicial Complex
Las Cruces, NM 88001
523-5641

DISTRICT ATTORNEY
San Miguel County Courthouse
Las Vegas, NM 87701
425-6746

DISTRICT ATTORNEY
P.O. Box 718
Los Lunas, NM 87031
856-9643

DISTRICT ATTORNEY
P.O. Box 2041
Santa Fe County Judicial Complex
Santa Fe, NM 87501
827-3211

DISTRICT ATTORNEY
P.O. Box 1099
County Courthouse
Socorro, NM 87801
835-0052

DISTRICT ATTORNEY
P.O. Drawer E
Taos, NM 87571
758-8683

DISTRICT ATTORNEY
P.O. Box 1141
Tucumcari, NM 88401
461-2075

AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO
615 First Street NW, Ste. 200
Albuquerque, NM 87102
843-7822

NEW MEXICO DEPARTMENT OF HUMAN SERVICES
PERA Building
Santa Fe, NM 87501
827-5606

NEW MEXICO DEPARTMENT OF EDUCATION
General Counsel
Education Building
Santa Fe, NM 87501
827-5651